

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of ARM 17.8.759 pertaining to) PROPOSED AMENDMENT
review of permit applications)
) (AIR QUALITY)

TO: All Concerned Persons

1. On October 3, 2005, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., September 23, 2005, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.759 REVIEW OF PERMIT APPLICATIONS (1) through (3) remain the same.

(4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by ARM 17.8.748 and the applicant of the department's preliminary determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:

(a) remains the same.

(b) the date by which all comments on the preliminary determination must be submitted in writing, which must be within:

(i) remains the same.

(ii) 15 days after the notice is mailed for all other applications, except as provided in (5); and

(c) remains the same.

(5) The department may extend by 15 days the period within which public comments may be submitted as described in (4)(b)(ii) and the date for issuing a final decision on a permit application as described in 75-2-211(9)(b), MCA, under the following conditions:

(a) if the department finds that an extension would serve the public interest;

(b) upon request of the applicant or a member of the public and if the request for an extension is submitted to the

department by the date that written comments on the preliminary determination originally were due; or

(c) if the preliminary determination contains one or more requirements of 40 CFR part 63, as incorporated by reference in this chapter, that require a 30-day comment period.

(6) The department shall notify the applicant of any extension requests that are granted.

(5) remains the same, but is renumbered (7).

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

REASON: HB 581, enacted by the 2005 Montana Legislature, requires the Board to adopt rules providing a period of 15 days in which the public may submit comments on certain draft air quality permits. The legislation also requires the Board to adopt rules providing the basis upon which the Department may extend, by 15 days, this comment period and the period for notifying an applicant of the Department's final decision on approval or denial of an application.

Air quality permits can be complex documents that require considerable review to develop an understanding of the basis for and appropriateness of the conditions contained within them. In some instances, 15 days is insufficient to conduct the necessary review and provide useful comment. Because each source of air pollution, its impact and the circumstances of the affected individuals are unique, circumstances justifying an extension of time may vary widely from one situation to another. Accordingly, the Board believes that allowing an extension of time when it would serve the public interest would allow the Department to consider the unique circumstances of each situation when determining whether an extension of time is warranted. Granting an extension where an applicant or member of the public requests it in writing no later than the end of the original 15-day period would allow for comments from interested persons when the Department has not taken independent action to extend the time period. Also, the Board believes it is reasonably necessary to allow 30 days rather than 15 where federal regulations require it.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., October 10, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

David M. Rusoff
DAVID M. RUSOFF
Rule Reviewer

BY: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State August 1, 2005.